

IN THE
 COURT OF CRIMINAL APPEALS OF TEXAS

MICHAEL RAY SENN,
 APPELLANT

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FILED
 COURT OF CRIMINAL APPEALS
 11/20/2018
 DEANA WILLIAMSON, CLERK

V.

NO. PD-0145-17

THE STATE OF TEXAS,
 APPELLEE

MOTION FOR EXTENSION OF TIME TO FILE
THE STATE'S PETITION FOR DISCRETIONARY REVIEW

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

The State requests that this Court grant a thirty-day extension of time for filing the State's petition for discretionary review.

I.

The trial court is the 213th Judicial District Court of Tarrant County, Texas, the Honorable Louis Sturns, presiding. The style of the case in the trial court is *The State of Texas v. Michael Ray Senn*, No. 1308222R.

II.

A jury convicted Appellant of sexual assault as alleged in count one of the indictment. It also affirmatively answered the submitted special issue statutorily enhancing the sexual-assault conviction from a second-degree felony to a first-

degree felony under section 22.011(f) of the Texas Penal Code. The jury sentenced Appellant to confinement for life.

III.

On Appellant's petition for discretionary review, this Court vacated the lower court's judgment and remanded the case because the lower court did not have the benefit of *Arteaga v. State*, 521 S.W.3d 329 (Tex. Crim. App. 2017). *State v. Senn*, No. PD-0145-17 (Tex. Crim. App. November 22, 2017) (per curiam) (not designated for publication). On remand, the court of appeals concluded that the evidence is insufficient to trigger the statutory enhancement under section 22.011(f), modified the trial court's judgment to reflect a conviction for a second-degree felony offense of sexual assault, and reversed and remanded to the trial court for a new trial on punishment only. *Senn v. State*, No. 02-15-00201-CR (Tex. App.—Fort Worth May 17, 2018), *withdrawn on reh'g*, No. 02-15-00201-CR (Tex. App.—Fort Worth October 25, 2018, no pet. h.).

On June 1, 2018, the State timely filed a motion for rehearing and motion for rehearing en banc. On October 25, 2018, the court of appeals withdrew its prior opinion and judgment, denied the State's motion for rehearing, and substituted its new published opinion and judgment. *Senn v. State*, No. 02-15-00201-CR (Tex. App.—Fort Worth October 25, 2018, no pet. h.). The lower court again held that the

evidence was insufficient to trigger the statutory enhancement for sexual assault under section 22.011(f). *Id.* Justice Lee Gabriel filed a dissenting opinion. *Id.* (Gabriel, J., dissenting).

IV.

The State's petition for discretionary review is currently due on November 26, 2018. Pursuant to rule 68.2(c) of the Texas Rules of Appellate Procedure, the State requests a thirty-day extension of time to file its petition for discretionary review.

V.

The State's lead appellate counsel in this case is currently working to complete the State's brief in the death-penalty direct appeal of *Amos Joseph Wells III v. The State of Texas*, No. AP-77,070, which is due on December 3, 2018.

VI.

This extension is not requested for purposes of delay, but to adequately present to this Court the reasons why it should review and reverse the court of appeals' judgment in this case.

Therefore, the State prays that this Court grant its Motion for Extension of Time to File the State's Petition for Discretionary Review and extend the time for filing the State's petition for discretionary review to December 26, 2018.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that on November 19, 2018, I spoke via telephone with Appellant's counsel, William Biggs, and he informed me that he does not oppose this motion for extension of time to file State's petition for discretionary review.

/s/ Helena F. Faulkner
HELENA F. FAULKNER
Assistant Criminal District Attorney

CERTIFICATE OF SERVICE

A copy of the State's Motion for Extension of time to file the State's Petition for Discretionary Review has been electronically sent to Appellant's counsel, William R. Biggs, wbiggs@williambiggslaw.com, on November 20, 2018.

/s/ Helena F. Faulkner
HELENA F. FAULKNER
Assistant Criminal District Attorney